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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re Z.J., a Person Coming Under the Juvenile Court Law.	
SAN BERNARDINO COUNTY CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. C.J. et al., Defendants and Appellants.	E070378 (Super.Ct.No. J274454) OPINION

APPEAL from the Superior Court of San Bernardino County. Annemarie G. Pace, Judge. Reversed in part and affirmed in part.

William D. Caldwell, under appointment by the Court of Appeal, for Defendant and Appellant, D.J.

Christopher R. Booth, under appointment by the Court of Appeal, for Defendant and Appellant, C.J.

Michelle D. Blakemore, County Counsel, and Jodi L. Doucette, Special Counsel, for Plaintiff and Respondent.

I. INTRODUCTION

Defendants and appellants, D.J. (Mother) and C.J. (Father), are the parents of Z.J., a boy born in November 2017. The parents appeal from the juvenile court's April 23, 2018, dispositional orders adjudicating Z.J. a dependent of the court (Welf. & Inst. Code, § 300, subds. (b), (j));[1] removing Z.J. from parental custody (§ 361, subd. (c)(1)); denying Mother reunification services for Z.J. (§ 361.5, subd. (b)(6), (7), (11)); ordering Father to participate in family reunification rather than family maintenance services; and requiring each parent's visits with Z.J. to be supervised.

Mother joins Father's claims to the extent they may benefit her. (Cal. Rules of Court, rule 8.200(a)(5).) Together, the parents claim insufficient evidence supports each of the court's jurisdictional findings and dispositional orders. We conclude insufficient evidence supports the two jurisdictional findings against Father. But we conclude sufficient evidence supports all of the jurisdictional findings against Mother, and we affirm all of the court's dispositional orders regarding each parent.

II. FACTS AND PROCEDURE

A. *The Prior Dependency Case for Z.J.'s Older Sibling, "ZA"*

When Z.J. was born in November 2017, Mother's older child, Z.J.'s half sibling, "ZA," a girl born in April 2013, had an open dependency case. ZA came to the attention

[1] All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

of plaintiff and respondent, San Bernardino County Children and Family Services (CFS), on May 17, 2013, when she was less than one month old.

On May 15, 2013, ZA was admitted to a hospital for a "healing left clavicular fracture," and doctors discovered ZA had multiple other nonaccidental healing fractures, including posterior rib, right femur, and bilateral knee fractures. Some of the fractures had occurred at different times, and the doctors ruled out brittle bones disease as the cause of any of the fractures.

On May 8, 2013, ZA's maternal grandmother noticed a "bump" on ZA's clavical, but Mother, ZA's sole caregiver, did not seek medical treatment for ZA until May 15. Mother lived with her father and two brothers, but denied leaving ZA in their care for more than a few minutes at a time. ZA's father, T.M., was "not involved" with ZA and was requesting a paternity test. ZA had not been ill since her birth and had been "eating well with no issues." On May 23, ZA was taken into protective custody and placed with a relative.

Mother reported she did not know how ZA was injured and offered two possible explanations: (1) Mother once "pulled" ZA's "legs down" to dress her, and (2) the doctor was "rough" with ZA when delivering her. Mother needed "vacuum assistance" in delivering ZA, but ZA was discharged from the hospital only two days after she was born and "had a normal 2 week well-child visit." Thus, ZA had no bone fractures at birth or when she was two weeks old. Mother later admitted she may have caused ZA's knee fractures when she "pulled" on ZA's legs "too hard" while dressing her. Mother said she

was "irritated" when she did this because ZA had "peed all over" while Mother was cooking food. Mother insisted ZA's other bone fractures must have occurred during ZA's delivery.

A pediatrician confirmed that Mother's explanation of pulling on ZA's legs could have caused ZA's knee *and* right femur fractures, but there was no explanation for ZA's other bone fractures. While supervising one of Mother's visits, a social worker observed Mother to be "rough in her handling" of ZA's legs and "oblivious to how she was handling" ZA. When cautioned to be careful of ZA's legs, which were not in casts but healing, Mother responded, "'She's fine.'" T.M. believed Mother was "'lying'" about the cause of ZA's injuries and said Mother was "'a habitual liar.'" Mother was referred to but did not engage in predispositional services for ZA.

In September 2013, the juvenile court sustained allegations that ZA suffered nonaccidental injuries, namely, clavicle, rib, femur, and knee fractures, while in Mother's care, and on this basis found ZA was described in section 300, subdivisions (a) (serious physical harm), (b) (failure to protect), and (e) (severe physical abuse of child under age five). The court ordered ZA removed from Mother's physical custody (§ 361, subd. (c)) and denied Mother reunification services pursuant to section 361.5, subdivision (b)(5), which allows the court to deny reunification services to a parent for a child based on clear and convincing evidence that the child was brought within the jurisdiction of the court pursuant to section 300, subdivision (e) "because of the conduct of that parent . . . ."

In April 2018, this court affirmed the juvenile court's October 27, 2017, judgment terminating parental rights to ZA and selecting adoption as her permanent plan. (*In re Z.J.* (Apr. 25, 2018, E069446) [nonpub. opn.], pp. 2, 12.) Throughout ZA's dependency, Mother never had an unsupervised visit with ZA. (*Id.* at p. 7.) According to CFS reports, Mother was convicted of "[c]hild [e]ndangerment" (Pen. Code, § 273a, subd. (a)) on July 3, 2013, based on her severe physical abuse of ZA. Mother pled guilty to the charge, served several months in custody during 2013, and was sentenced to formal probation. (See *In re Z.J.* (May 25, 2016, E064590) [nonpub. opn.], p. 4 & fn. 3.)

B. *The Current Dependency Proceedings for Z.J.*

In early December 2017, shortly after Z.J. was born in November 2017, CFS received an emergency response referral concerning Z.J., based on ZA's dependency case. When a CFS social worker contacted her by phone on December 13, Mother said she and Z.J. were living in Las Vegas, but Mother would not provide her address or agree to meet with the social worker. Mother called CFS on December 21, said she had been "'trying to get [ZA] back for 4 years'" and "'the doctor'" had caused ZA's broken leg (femur) and clavicle. Mother still refused to disclose her and Z.J.'s whereabouts, but reported Father was Z.J.'s father.

Mother, Father, and Z.J. came to the CFS offices on January 9, 2018. Z.J. was in good condition and had gained weight since his birth, although Mother had been moving "back and forth" between Nevada and San Bernardino and had received "incomplete prenatal care" for Z.J. Mother and Father were not married and did not live together.

Father lived with his mother and grandmother and claimed he visited Mother and Z.J. every other day. Father was born in 1988, Mother in 1990. Both parents appeared "appropriately bonded" with Z.J. "as evidenced by their attentiveness to his needs, changing him, holding him, and feeding him."

Both parents denied using alcohol or drugs and agreed to drug test. Father was given an identification card to present at the drug testing facility because he did not have a state-issued identification card. Father said that if Z.J. were removed from Mother's custody he could care for Z.J. in his home. Mother reiterated that she did not cause ZA's injuries and claimed she had been wrongly accused and served time for a crime she did not commit. CFS also reported that Father "appeared to have been minimally informed of [Mother's] CFS history."

On January 10, 2018, CFS conducted a meeting and determined Mother did not have an adequate safety network in order to care for Z.J. Mother tested positive for amphetamines and marijuana on January 10. When referred to predispositional services, Mother claimed she had completed individual and family therapy and a parenting course in connection with ZA's dependency, but she did not have proof of her participation in any services.

Father did not attend the January 10 CFS meeting, but later that day he was able to show, with his mother and grandmother, that his home was appropriate for Z.J. to be maintained in his care. Father said he had a history of marijuana use and he would drug

test the next day. On January 12, Father tested negative for controlled substances, including marijuana.

On January 11, 2018, CFS filed a petition alleging Z.J. came within section 300, subdivision (b) (failure to protect) and (j) (abuse of sibling).[2] At a January 12 detention hearing, the court found a prima facie case had been made and ordered Z.J. detained with Father outside Mother's custody on the condition Father continued to live with his mother and grandmother. In response to the court's questions, Father said he was not on Z.J.'s birth certificate although he was Z.J.'s biological father.

The jurisdictional and dispositional hearing for Z.J. was continued several times, first from February 2 to March 7, 2018. Mother failed to show up for a jurisdictional/dispositional interview on January 29. In a March 6 addendum report, CFS recommended denying Mother reunification services for Z.J. Because Mother had "failed to acknowledge and offer any reasonable explanations for the severe physical abuse" ZA suffered, and because the juvenile court in ZA's case had sustained a section 300 subdivision (e) allegation against Mother, CFS had "serious concerns" that Mother would "engage in the same behavior" with Z.J.

[2] An additional "f4" allegation that Mother "was convicted of breaking [ZA's] knee, femur, and clavical in 2013, leaving [Z.J.] at substantial risk of the same" (§ 300, subd. (f)) was dismissed on February 2, 2018, at CFS's request.

On March 4, 2018, Father was arrested and charged with attempted robbery, and he was released from custody on March 8.[3] Due to Father's incarceration, the court "vacate[d]" the March 7 jurisdictional and dispositional hearing and set a pretrial settlement conference on March 14. Father later explained he was "with . . . friends," that they were "pulled over," and "they tried to charge him with attempted burglary" but the charge was "dropped to a misdemeanor and he was placed on summary probation." CFS was unable to obtain a police report of the incident.

On March 13, CFS reported Mother had been having difficulty arranging her supervised visits with Z.J. through Father. Father did not have a phone, and CFS arranged a visitation schedule on Mondays and Thursdays at CFS offices, to be supervised by the paternal grandmother. Father canceled a March 15 (Thursday) visit, then canceled the March 19 (Monday) visit. Thus, CFS was "highly concern[ed]" that Father was not "complying with Court orders and communicating appropriately."

At the pretrial settlement conference on March 14, minor's counsel told the court she would be seeking to remove Z.J. from Father's care based on "his failure to communicate and collaborate with [CFS]." Minor's counsel planned to subpoena the police report from Father's "most recent arrest." Father's other criminal history consisted solely of two convictions for marijuana possession (Health & Saf. Code, § 11357, subd.

[3] In court on March 7 a woman claiming to be the mother of Father's two older children (Z.J.'s half siblings through Father) appeared and told the court that she and Father's grandmother were caring for Z.J. The woman wanted to be considered for placement of Z.J. if Z.J. was removed from Father's care.

(b)) in September 2013 and March 2017. The court ordered both parents to drug test on March 14. On March 14, Father went to a drug testing facility but "he failed to provide a sample." On the same day, Mother tested positive for amphetamines and marijuana. Then, on March 23, Father tested positive for amphetamines.

On March 22, 2018, CFS reported Mother was attending parenting, anger management, and individual therapy, but it was too early to tell whether Mother had benefited from the services because she had only attended three of 12 "sessions." Father had attended "three sessions," but falsely claimed the social worker had canceled his classes. The social worker reported doing "no such thing" and advised Father to call and have his services reinstated.

C. *The Jurisdictional Findings and Dispositional Orders for Z.J.*

A contested jurisdictional hearing was held on March 23, 2018. The court sustained the remaining allegations of the original petition: (1) Father knew or reasonably should have known that Z.J. was "at risk of being harmed while in the care of [Mother]" (the b1 allegation); (2) Father "has a criminal history which negatively impacts his ability to provide and care for [Z.J.]" (the b2 allegation); (3) Mother "has a criminal history which negatively impacts her ability to provide and care for [Z.J.]" (the b3 allegation); and (4) Mother "has failed to reunify with [ZA] . . . placing [Z.J.] at substantial risk of the same" (the j5 allegation).

The court made these jurisdictional findings based on CFS's reports, the contents of which are described above. Neither parent testified or presented any other affirmative

evidence. At the behest of minor's counsel, the court ordered Father to drug test on March 23. Father was also ordered to wait in the hallway for a photograph and drug testing paperwork, because Father still did not have photographic identification. Father told the court, "[y]ou're going to get a clean test," but as noted, Father tested positive for amphetamines on March 23.

A contested dispositional hearing was held on April 23, 2018. Mother's counsel sought family reunification services for Mother. Both CFS and minor's counsel continued to recommend denying Mother reunification services, and CFS joined minor's counsel's request to remove Z.J. from Father's care and deny family maintenance services to Father.

Father's counsel disputed the results of Father's positive March 23 drug test for amphetamines and asked for a "confirmation test." The court admitted the results of Father's positive March 23 drug test into evidence, and noted that the absence of a confirmation test was relevant to the weight but not the admissibility of the positive drug test. The court also admitted CFS's previously-filed reports into evidence, which included the dependency file for ZA (San Bernardino County Superior Court case No. J249605).

Mother testified it was her understanding that ZA was "hurt" "[f]rom the tools that the doctor used" while delivering ZA. Mother also claimed she had engaged in services "on [her] own" and had completed "152 classes" comprised of anger management, parenting, and sessions with a psychologist. But Mother adduced no certificates showing

she had attended or benefited from these classes and sessions. Father's counsel represented Father was "in classes" on Fridays.

In a subsequent discussion with the court concerning the bases for denying Mother services, Mother claimed she "never went to prison" for her child endangerment conviction, but she "signed a deal for four years of probation because [she] wanted to get out to fight for [ZA] for something [she] did not do." Apparently, Mother did not mean to suggest she did not serve time in jail for her child endangerment conviction. Earlier during the hearing, Mother's counsel argued (without objection from Mother) that Mother "went to jail" and "spent quite some time there" for her child endangerment conviction, and Mother had thus "paid for the cost of losing her children."

At the conclusion of the hearing, the court declared Z.J. a dependent, ordered Z.J. removed from both parents' care, granted Father reunification services, denied Mother reunification services pursuant to section 361.5, subdivision (b)(6), (7), and (11), and ordered supervised visits for both parents. The court explained that Mother continued to deny responsibility for ZA's injuries despite her child endangerment conviction. The court also found Father had not been "completely" cooperative with CFS because he had not cooperated in arranging Mother's visits with Z.J., in participating in his services for Z.J., or in being available to CFS. The court also noted Father had been arrested while Z.J. was in his care, and Father had a positive (though disputed) March 23 drug test for amphetamines.

III. DISCUSSION

A. *Substantial Evidence Supports the Jurisdictional Findings Against Mother, But Insufficient Evidence Supports the Jurisdictional Findings Against Father*

Mother and Father each claim insufficient evidence supports the section 300, subdivision (b) jurisdictional findings against them. Mother also claims the j5 finding against her must be dismissed. We conclude substantial evidence supports the b3 and j5 findings against Mother, but insufficient evidence supports the b1 and b2 findings against Father.

1. Standard of Review

"On appeal, '[a] dependency court's jurisdictional findings are reviewed under the substantial evidence test. [Citation.] Under this test, we resolve all conflicts in the evidence, and indulge all reasonable inferences that may be derived from the evidence, in favor of the court's findings.' [Citation.] 'The judgment will be upheld if it is supported by substantial evidence, even though substantial evidence to the contrary also exists and the trial court might have reached a different result had it believed other evidence.' [Citation.] Importantly, issues of credibility in this context are questions for the trier of fact. [Citation.] Substantial evidence may include inferences, so long as any such inferences are based on logic and reason and rest on the evidence. [Citation.]" (*In re Madison S.* (2017) 15 Cal.App.5th 308, 318.)

Additionally, "'[w]hen a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court's jurisdiction, a reviewing

court can affirm the juvenile court's finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence. In such a case, the reviewing court need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence.' [Citation.]" (*In re I.J.* (2013) 56 Cal.4th 766, 773-774.)

2. Substantial Evidence Supports the b3 Finding Against Mother

We begin with the court's true finding on the b3 allegation against Mother. The court found Mother "has a criminal history which negatively impacts her ability to provide and care for [Z.J.]" (the b3 finding).

A child comes within the jurisdiction of the juvenile court pursuant to section 300, subdivision (b)(1) if "there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent . . . to adequately supervise or protect the child . . . ." There are three elements to the section 300, subdivision (b)(1) jurisdictional finding: "'(1) neglectful conduct by the parent in one of the specified forms; (2) causation; and (3) "serious physical harm or illness" to the minor, or a "substantial risk" of such harm or illness.' [Citation.]" (*In re Isabella F.* (2014) 226 Cal.App.4th 128, 139-140; cf. *In re R.T.* (2017) 3 Cal.5th 622, 629 [parent's neglectful conduct sufficient but not necessary to support § 300, subd. (b)(1) jurisdiction].)

Mother claims CFS failed to show a causal connection between her criminal conviction for child endangerment and "the statutorily recognized harm or risk of future harm" to Z.J. under section 300, subdivision (b). We disagree. Mother was convicted of

child endangerment in 2013, based on the unexplained bone fractures her older child, ZA, suffered as an infant while in Mother's care. Throughout the dependency proceedings for Z.J., which began in early 2018 when Z.J. was an infant, Mother refused to accept responsibility for ZA's injuries. Mother insisted ZA's injuries were caused by the doctor who delivered ZA, and not by Mother's rough handling of ZA, even though ZA was uninjured when discharged from the hospital two days after her birth and at a wellness checkup two weeks later. Mother's steadfast refusal to accept any responsibility for ZA's injuries placed Z.J. at a substantial risk of suffering "serious physical harm" (§ 300, subd. (b)) of the same type ZA suffered five years earlier in Mother's care. Indeed, substantial evidence shows Mother was unable to protect Z.J. from Mother's own negligent, "oblivious" conduct in handling infants. Thus, substantial evidence supports all three elements of the b3 finding, including the causation element.

Mother emphasizes CFS reported Z.J. was "healthy" and "free from any signs of being abused or neglected" during the first several weeks of his life in Mother's care. As Mother also points out, CFS reported Mother was attentive to Z.J.'s needs, "changing him, holding him, and feeding him." But these arguments misapprehend the evidentiary basis of the b3 finding. The b3 finding is not based on Mother's inability to provide "regular care" for Z.J., an alternative basis for finding juvenile court jurisdiction pursuant to section 300, subdivision (b). Rather, the b3 finding is based on the "substantial risk" Z.J. would suffer "serious physical harm" in Mother's care due to Mother's failure to

accept responsibility for the serious physical harm (nonaccidental bone fractures) that ZA suffered as an infant in Mother's care.

3. Substantial Evidence Supports the j5 Finding Against Mother

The court also found true the j5 allegation that Mother "has failed to reunify with [ZA] . . . placing [Z.J.] at substantial risk of the same" (the j5 finding). Mother claims the j5 finding must be dismissed, "because there is no corresponding count adequately relating to [Z.J.'s] half-sibling [ZA]." (Capitalization and bolding omitted.)

Mother suggests a juvenile court cannot find a section 300, subdivision (j) allegation true for a child unless the court finds, in the child's case, that the child's sibling is concurrently at risk of harm. This is not the law. Nothing in section 300, subdivision (j) requires the court to find, in the child's case, that the child's sibling is currently at risk of similar harm as the child before the court. Rather, "[s]ection 300, subdivision (j) provides a basis for juvenile court jurisdiction where the child's sibling *has been* abused or neglected, as defined in section 300, subdivision (a), (b), (d), (e) or (i), and there is a substantial risk the child will be abused or neglected, as defined in any of those subdivisions." (*In re R.V.* (2012) 208 Cal.App.4th 837, 842-843, italics added.) Thus, a jurisdictional finding that a child is described in section 300, subdivision (j) may be based on a prior adjudication that the child's sibling *was* abused or neglected as defined in section 300, subdivision (a), (b), (d), (e), or (i).[4]

[4] Mother relies on *In re Ethan C.* (2010) 188 Cal.App.4th 992, 1004, review granted December 21, 2010, S187587, for the proposition that a jurisdictional finding pursuant to section 300, subdivision (j), "requires a corresponding [or concurrent] count pertaining to" the child's sibling. The case is not citable because it was depublished

This standard was met here, and the same evidence that supports the b3 finding against Mother supports the j5 finding. CFS's reports show that, in ZA's prior dependency case, ZA was adjudicated a dependent pursuant to section 300, subdivisions (a), (b), and (e). CFS's reports also show that ZA suffered serious physical harm (nonaccidental bone fractures) as an infant in Mother's care, and Mother continually refused to take responsibility for ZA's injuries throughout the current dependency proceedings for Z.J. As discussed, this placed Z.J. at a substantial risk of suffering similar serious physical harm in Mother's care.

4. Insufficient Evidence Supports the b1 and b2 Findings Against Father

Regarding Father, the court found Father knew or reasonably should have known that Z.J. was "at risk of being harmed while in the care of [M]other" (the b1 finding), and Father "has a criminal history which negatively impacts his ability to provide and care for [Z.J.]" (the b2 finding).

As noted, there are three elements to a section 300, subdivision (b)(1) finding: "'(1) neglectful conduct by the parent in one of the specified forms; (2) causation; and (3) "serious physical harm or illness" to the minor, or a "substantial risk" of such harm or illness.' [Citation.]" (*In re Isabella F.*, *supra*, 226 Cal.App.4th at pp. 139-140; cf. *In re R.T.*, *supra*, 3 Cal.5th at p. 629 [parent's neglectful conduct sufficient but not necessary

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when the California Supreme Court granted review in the case on December 21, 2010, and the court did not subsequently order any part of the case published. (Cal. Rules of Court, former rules 8.1105(e), 8.1115(a).) In any event, the case neither held nor suggested that a jurisdictional finding pursuant to section 300, subdivision (j) requires a concurrent or corresponding finding, in the child's case, that the child's sibling has been abused or neglected as defined in section 300, subdivision (a), (b), (d), (e), or (i).

to support § 300, subd. (b)(1) jurisdiction].) A jurisdictional finding must be shown by a preponderance of the evidence. (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1396.)

As Father points out, the only evidence supporting the b1 finding—that Father *knew or reasonably should have known* that Z.J. was at risk of harm in Mother's care—is a single statement in the detention report that Father "'appeared to have been minimally informed of'" Mother's CFS history. Father argues this single statement is insufficient to support the b1 finding, and we agree. Simply put, CFS did not show that Father's "minimal" knowledge of Mother's child protective history with ZA placed Z.J. at a substantial risk of serious physical harm or illness. CFS never reported and no evidence shows that Father knew or reasonably should have discovered the nature of or the details concerning Mother's child protective history with ZA—including that ZA suffered nonaccidental bone fractures as an infant in Mother's care—and despite that knowledge failed to take reasonable steps to protect Z.J. from Mother.[5]

To be sure, CFS's reports show that, by the time of the March 23, 2018, jurisdictional hearing, Father should have known Z.J. was at a substantial risk of serious physical harm or illness "*in the care of the Mother*" (italics added), as the b1 allegation stated. But Z.J. was no longer in Mother's care on March 23. On January 11, Z.J. was detained and placed in the home Father shared with his mother and grandmother. And on

[5] CFS's reports do not indicate that Father learned of Mother's history with ZA any earlier than January 9, 2018, when Father and Mother met with a social worker in CFS's offices. CFS reported Z.J. was in "good condition" on January 9, Father had been visiting Mother and Z.J. "every other day," and Father told the social worker that, if Z.J. had to be removed from Mother's custody, then Father could care for Z.J. in the home Father shared with his mother and grandmother.

January 30, CFS reported Father was "providing adequate care" for Z.J. and was "meeting all" of Z.J.'s "basic needs."

Insufficient evidence also supports the b2 finding that Father had a criminal history which negatively impacted his ability to provide and care for Z.J. Before the dependency proceedings for Z.J. commenced in January 2018, Father had two criminal convictions for marijuana possession (Health & Saf. Code, § 11357, subd. (b)), the first in September 2013 and the second in March 2017. The March 7, 2018, jurisdictional hearing was continued because Father was in jail. On March 4, Father was arrested and charged with attempted robbery, and he was released from custody on March 8. The attempted robbery charge was "dropped to a misdemeanor," and Father was placed on summary probation.

No evidence showed that Father's March 4, 2018, arrest or his brief, four-day incarceration placed Z.J. at a substantial risk of serious physical harm or illness. (§ 300, subd. (b)(1).) At the March 7 hearing, the mother of Father's two older children reported that she and Father's grandmother were caring for Z.J. while Father was incarcerated, and the two of them would continue to care for Z.J. if Z.J. were ordered removed from Father. Thus, the record shows Z.J. was not left with no means of care or support during Father's brief incarceration. (Cf. § 300, subd. (g) [dependency court jurisdiction lies where child has been left without any provision for support]; *In re S.D.* (2002) 99 Cal.App.4th 1068, 1077-1078 [as long as parent arranges for the care of his or her child, the parent's

incarceration is not a basis for dependency court jurisdiction. "There is no 'Go to jail, lose your child' rule in California."].)

At oral argument, CFS argued Father's drug use, as evidenced by his failure to provide a test sample on March 14 and his positive test for amphetamines on March 23, are sufficient to support the b2 allegation that Father "has a criminal history which negatively impacts his ability to provide and care for [Z.J.]" We disagree. The March 23 positive drug test was taken just after the March 23 jurisdictional hearing and was not available at the hearing. Moreover, although methamphetamine use is a crime (Health & Saf. Code, § 11550, subd. (a)), the b2 allegation did not allege, and was not amended to allege, that Father had *a methamphetamine or other substance abuse problem* which negatively affected his ability to parent Z.J. (See *In re Mariah T.* (2008) 159 Cal.App.4th 428, 434 [due process provisions of federal and California Constitutions require that parents in dependency proceedings be given notice of the conduct prohibited by the dependency scheme].)

B. *Substantial Evidence Supports All of the Court's Dispositional Orders*

1. The Order Bypassing Mother's Reunification Services

Mother claims insufficient evidence supports the order bypassing or denying Mother reunification services pursuant to section 361.5, subdivision (b)(6), (7), and (11). Mother claims the court's findings at the dispositional hearing do not support the order bypassing reunification services to her pursuant to any of these statutory provisions. We disagree. As we explain, substantial evidence supports the order denying Mother

reunification services pursuant to section 361.5, subdivision (b)(11). And, because "only one valid ground is necessary to support a juvenile court's decision to bypass a parent for reunification services" (*In re Madison S.*, *supra*, 15 Cal.App.5th at p. 324), it is unnecessary to determine, and we do not determine, whether substantial evidence also supports the order denying Mother reunification services pursuant to section 361.5 subdivision (b)(6) and (7).

As a general rule, when a child is removed from parental custody pursuant to the dependency laws, the juvenile court is required to provide reunification services to the child, the child's mother, and the child's statutorily presumed father. (§ 361.5, subd. (a); *Jennifer S. v. Superior Court* (2017) 15 Cal.App.5th 1113, 1120.) But section 361.5, subdivision (b) allows the court to deny reunification services to """those parents who are unlikely to benefit"' [citation] from such services or for whom reunification efforts are likely to be 'fruitless' [citation]." (*Jennifer S. v. Superior Court*, *supra*, at pp. 1120-1121.)

Section 361.5, subdivision (b)(11) provides: "(b) Reunification services need not be provided to a parent or guardian described in this subdivision when the court finds, by clear and convincing evidence . . . . [¶] . . . [¶] (11) That the parental rights of a parent over any sibling or half sibling of the child had been permanently severed, and this parent is the same parent described in subdivision (a), and that, according to the findings of the court, this parent has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half sibling of that child from the parent." The court is

required to deny reunification services for a parent described in section 361.5, subdivision (b)(11), "unless the court finds, by clear and convincing evidence, that reunification is in the best interest of the child. (§ 361.5, subd. (c)(2).)

We review an order denying reunification services to a parent pursuant to section 361.5, subdivision (b)(11), and the court's findings in support of the order, for substantial evidence. (See *D.F. v. Superior Court* (2015) 242 Cal.App.4th 664, 672.) Here substantial evidence supports the order denying Mother reunification services pursuant to section 361.5, subdivision (b)(11). First, the record shows Mother's parental rights to Z.J.'s older half sibling ZA were terminated in October 2017. And since that time, the court implicitly found, and substantial evidence shows, that Mother did not "subsequently ma[k]e a reasonable effort to treat the problems that led to removal of [ZA] from [Mother]." (§ 361.5, subd. (b)(11).)

"'The reasonable effort requirement focuses on the extent of a parent's efforts, not whether he or she has attained "a certain level of progress." [Citation.] "To be reasonable, the parent's efforts must be more than 'lackadaisical or half-hearted.'" [Citation.] However, "[t]he 'reasonable effort to treat' standard 'is not synonymous with "cure."'" [Citation.] [¶] We do not read the "reasonable effort" language in the bypass provisions to mean that any effort by a parent, even if clearly genuine, to address the problems leading to removal will constitute a reasonable effort and as such render these provisions inapplicable. It is certainly appropriate for the juvenile court to consider the duration, extent and context of the parent's efforts, as well as any other factors relating to

the quality and quantity of those efforts, when evaluating the effort for reasonableness. And while the degree of progress is not the focus of the inquiry, a parent's progress, or lack of progress, both in the short and long term, may be considered to the extent it bears on the reasonableness of the effort made.' [Citation.]" (*D.F. v. Superior Court, supra,* 242 Cal.App.4th at p. 672.)

The record shows Mother made some efforts to treat the problems that led to the removal of ZA from Mother's care in 2013. At the April 23, 2018, dispositional hearing, Mother testified she had completed some services "on [her] own," including "152 classes" of anger management, parenting, and sessions with a psychologist. But Mother also testified ZA was "hurt" "[f]rom the tools that the doctors used" while delivering ZA. Thus, at the dispositional hearing, Mother continued to deny any responsibility for the serious physical harm (nonaccidental bone fractures) ZA suffered while in Mother's care, as Mother had done at the inception of the dependency proceedings for Z.J. in January 2018.

Mother presented no evidence that granting her reunification services for Z.J. would prevent her from inflicting severe physical harm on Z.J., as she had done to ZA. "[T]here are no services that will prevent reabuse by a parent who refuses to acknowledge the abuse in the first place." (*In re A.M.* (2013) 217 Cal.App.4th 1067, 1077.) Nor was there any evidence that reunifying with Mother would be in the best interests of Z.J. (§ 361.5, subd. (c)(2).)

2. The Dispositional Orders Concerning Father

Father claims each of the dispositional orders regarding Father—namely, the orders (1) removing Z.J. from Father's custody, (2) requiring Father to participate in family reunification rather than family maintenance services, and (3) requiring Father's visits to be supervised—must be reversed because CFS failed to show by clear and convincing evidence that there were less intrusive means of protecting Z.J. than removing him from Father's care, with family reunification rather than family maintenance services for Father, and requiring Father's visits to be supervised. As we have noted, Mother joins Father's claims to the extent they may benefit her. (Cal. Rules of Court, rule 8.200(a)(5).) But as we explain, these claims lack merit for each parent.[6]

"A dependent child shall not be taken from the physical custody of his or her parents . . . with whom the child resides at the time the petition was initiated, unless the juvenile court finds clear and convincing evidence . . . . [¶] (1) [That] [t]here is or would be a substantial danger to the physical health, safety, protection, or physical or

[6] Father claims all of the dispositional orders affecting him must be reversed *solely* because insufficient evidence supports the jurisdictional (b1 & b2) findings against him. He is mistaken. Although, as Father points out, a juvenile court's dispositional orders must follow its jurisdictional findings (§ 358, subd. (a)), Father incorrectly suggests that a juvenile court is not authorized to remove a child from a parent's physical custody, or make other dispositional orders affecting a parent, where no jurisdictional findings were made against the parent or where (as here) insufficient evidence supports the jurisdictional findings against the parent. To the contrary, "[i]n all cases in which a minor is adjudged a dependent child of the court on the ground that the minor is a person described by Section 300, the court may limit the control to be exercised over the dependent child *by any parent* or guardian . . . ." (§ 361, subd. (a)(1), italics added.) And because the court ordered Z.J. removed from Father's custody, it was required to provide Father with reunification services unless it found an exemption applied. (§ 361.5, subd. (a); *In re Jaden E.* (2014) 229 Cal.App.4th 1277, 1281.)

emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's . . . ." (§ 361, subd. (c)(1).)

"Because we so abhor the involuntary separation of parent and child, the state may disturb an existing parent-child relationship only for strong reasons and subject to careful procedures." (*In re Keishia E.* (1993) 6 Cal.4th 68, 76.) California law therefore "requires that there be no lesser alternative before a child may be removed from the home of his or her parent." (*In re Jasmine G.* (2000) 82 Cal.App.4th 282, 284; § 361, subd. (c)(1).) But, """[t]he parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate. The focus of the statute is on averting harm to the child." [Citation.] The court may consider a parent's past conduct as well as present circumstances. [Citation.]"" (*In re John M.* (2012) 212 Cal.App.4th 1117, 1126.)

We review a juvenile court's dispositional order removing a child from parental custody for substantial evidence, "'bearing in mind the heightened burden of proof.'" (*In re Hailey T.* (2012) 212 Cal.App.4th 139, 146.) "Clear and convincing evidence requires a high probability, such that the evidence is so clear as to leave no substantial doubt." (*In re Isayah C.* (2004) 118 Cal.App.4th 684, 695.) Still, the appellant bears the burden of showing "'there is no evidence of a sufficiently substantial nature'" to support the dispositional removal order. (*In re D.C.* (2015) 243 Cal.App.4th 41, 55.)

Here, substantial evidence—evidence so clear as to leave no substantial doubt—shows that removing Z.J. from both parents' custody was necessary to protect Z.J.'s

physical and emotional well-being, and there were no other reasonable means by which Z.J.'s well-being could be protected without removing him from each parent's custody. (§ 361, subd. (c)(1).) Regarding Father, substantial evidence shows that, by the time of the April 23, 2018, dispositional hearing, Father had recently been arrested for a serious crime, had twice tested positive for amphetamines (including one test in which he failed to provide a sample and another positive test he contested), had inexplicably been canceling Mother's supervised visits with Z.J., and was not fully cooperating with CFS or fully participating in his service plan. Father also lied when he claimed the social worker had canceled his therapy sessions. Thus, Father's veracity and his ability and willingness to properly care for Z.J. was in serious question by the time of the dispositional hearing. Father was not prioritizing Z.J.'s well-being, and he was either too immature or unwilling to properly care for Z.J.

Substantial evidence also supports the order removing Z.J. from Mother's care. As we have discussed, at the time of the dispositional hearing for Z.J., Mother continued to deny responsibility for the serious physical harm (nonaccidental bone fractures) that Z.J.'s older sibling ZA suffered in Mother's care in 2013. Given that Mother did not have an adequate support system or "safety network" to care for Z.J., Z.J. was at a substantial risk of serious physical harm if returned to Mother's care.

Father claims there were less drastic alternatives to removing Z.J. from his care, including placing Z.J. with Father pursuant to a family maintenance plan. We disagree. The record shows that Father's mother and grandmother, with whom Father lived when

Z.J. was placed with Father *on the condition Father continue to live with these relatives*—were unable to control Father's criminal activity, drug use, participation in services, or cooperation with CFS or Mother. In sum, it was necessary to remove Z.J. from both parents' custody, as there were no less drastic alternatives to removing Z.J. from each parent's custody. (Cf. *In re Basilio T.* (1992) 4 Cal.App.4th 155, 171-172 [removal order reversed where court failed to consider less drastic alternatives to removal]; *In re Henry V.* (2004) 119 Cal.App.4th 522, 529-531 [same].)

3. Each Parent's Visits with Z.J. Were Properly Ordered Supervised

Lastly, Father claims—and Mother joins Father in claiming—that insufficient evidence supports the dispositional orders requiring each parent's visits with Z.J. to be supervised. As a general rule, visitation between a parent and child should be "as frequent as possible, consistent with the well-being of the child" (§ 362.1, subd. (a)(1)(A)); but "[n]o visitation order shall jeopardize the safety of the child" (§ 362.1, subd. (a)(1)(B)). We review juvenile court orders restricting parental visitation for an abuse of discretion. (See *In re Robert L.* (1993) 21 Cal.App.4th 1057, 1067.) The juvenile court did not abuse its discretion in ordering each parent's visits with Z.J. to be supervised. The record shows that requiring the visits to be supervised was necessary to protect Z.J.'s safety, because of the risks that Mother would physically abuse Z.J. and that Father would not prioritize Z.J.'s safety and would, instead, use drugs or engage in criminal activity while delegating his responsibility for Z.J. to others.

IV. DISPOSITION

The jurisdictional findings against Father are reversed. All of the court's dispositional orders, including the order adjudicating Z.J. a dependent of the juvenile court, are affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

FIELDS
J.

I concur:

RAMIREZ
P. J.

[*In re Z.J.*, E070378]

MENETREZ, J., Concurring in part and Dissenting in part.

I concur in the court's opinion except for the reversal of the true finding on the b1 count against Father, with which I respectfully disagree.

The detention report reflects that no later than January 9, 2018, Father knew that Z.J.'s older sibling had been removed from Mother's care, Mother had been incarcerated for child endangerment, and Mother failed to reunify with the sibling. Nonetheless, on January 9, 2018, Father told the Department of Children and Family Services (CFS) that he would provide care for Z.J. if Z.J. had to be removed from Mother's custody, but otherwise Z.J. would continue to remain in Mother's care, with Father visiting every other day. The record contains no evidence that Father has ever changed his position, even though the jurisdiction/disposition report reflects that Father learned well in advance of the jurisdiction hearing that the removal of the sibling and the criminal prosecution of Mother were based on multiple bone fractures that the sibling suffered as an infant in Mother's care. The evidence thus showed that, as of the time of jurisdiction hearing, Father knew the material facts of Mother's dependency history but would not protect Z.J. from Mother in the absence of intervention by CFS and the court. That is sufficient evidence to sustain the b1 count as to Father, so I respectfully dissent from the reversal of the true finding on that count. I concur in the remainder of the court's opinion.

MENETREZ

J.